IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8943 of 2000
with
CIVIL APPLICATION NO.10466/2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

KAMLESH INDRARAJ RAO

Appearance:
Mr.Premal Joshi, Asst.GOVERNMENT PLEADER for Petitioner
MS SADHANA SAGAR for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 13/02/2001

ORAL JUDGEMENT

The petitioner has challenged the validity of the award dated 15.3.1999 in Ref.(LCA) No.1101/95 passed by the Labour Court, Ahmedabad.

2. The facts giving rise to the present petition are as under:

(i) The respondent was working as a daily wager in purchase department of the petitioner. According to the respondent, he was engaged as a daily wager for the first time on 21.1.1985 and he worked upto 20.11.1985 under the petitioner. On 20.11.1985 when he had gone to attend his duties, he was informed by the concerned officer that he would be called as and when his services would be required and thereafter he was never called to perform his duties. Thereafter, the respondent raised an industrial dispute in 1994 and ultimately the matter was placed before the Labour Court. Before the Labour Court, though notice was served to the petitioner, nobody appeared for the petitioner and the matter was decided ex parte and by the impugned award, the petitioner has been directed to reinstate the respondent in service and to pay backwages to certain extent.

3. Learned Asst.Govt.Pleader Mr.Premal Joshi appearing for the petitioner has fairly submitted that the award was passed against the petitioner because nobody had appeared for the petitioner before the Labour Court though notice issued by the Labour Court had been served upon the petitioner. It has been submitted by him that, in fact, the respondent had not worked for 240 days and therefore the Labour Court ought not to have passed award in favour of respondent. Though he has made the above submission, he was conscious of the fact that no evidence was led before the Labour Court and therefore he has fairly submitted that the impugned award should be quashed and the matter should be remanded to the Labour Court so that after considering the evidence which might be led before the Labour Court, the matter can be decided afresh.

4. Learned Advocate Ms.Sadhana Sagar appearing for respondent has submitted that the matter should not be remanded because in that event the respondent will have to appear before the Labour Court and again the respondent would be put to much hardship. She has, however, fairly submitted that if the respondent is sufficiently compensated, she would not object to remand of the matter.

5. Looking to the facts of the case, it would be just and proper to quash the impugned award and direct the Labour Court to hear the matter afresh. So as to see that the respondent is not put to unnecessary expenditure, it is directed that the petitioner shall pay

a sum of Rs.3,000/- to the respondent by way of costs. As the petitioner is the State and default was committed by some of its officers, the petitioner-State shall recover the amount of costs from the concerned officer who had committed default in the matter of non-appearance before the Labour Court.

6. It would be open to the petitioner to raise all the contentions before the Labour Court including about the delay which was caused by the respondent in initiating the proceedings before the Labour Court under the Industrial Disputes Act, 1947. The Labour Court shall permit the parties to lead evidence and shall decide the matter afresh after considering the entire evidence adduced before it.

7. It is also directed that during the pendency of the litigation, if the petitioner requires services of a daily wager, which the respondent was doing, then the respondent shall be given priority and shall be engaged as a daily wager as and when his services are required.

8. In the circumstances, the impugned award is quashed. Rule is made absolute accordingly.

9. The petitioner shall deposit the amount of Rs.3,000/- by way costs before the Labour Court within five weeks from today and the said amount shall be permitted to be withdrawn by the respondent by way of Account Payee cheque upon identification by his advocate.

10. It is hoped that the Labour Court shall decide the matter as soon as possible and preferably within six months from today.

11. In view of the fact that main petition is finally disposed of, the Civil Application No.10466/2000 does not survive and is disposed of.

13.2.2001 (A.R.DAVE,J)